IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 128 OF 2005

SHRI SHAIKH MOHAMAD ALI AND ANR., ...Appellants

Versus

SHRI SHAIKH MOHAMMAD SHARIF AND ANR., ...Respondents

Shri J.P. Mulgaonkar, Advocate for the Appellants.

Coram:- D. D. SINHA, J.

Date:- 1st December, 2005

P.C.:

Heard Shri J. Mulgaonkar, learned Advocate for the appellants.

2. The learned counsel for the appellants states that the appellants are the original plaintiffs who have filed the suit for declaration of title and recovery of possession. The same was dismissed by the trial Court and therefore filed First Appeal. However the first appeal is also dismissed on the ground that the appellants failed to establish their absolute ownership right to the suit property. The learned counsel for the appellants further contended that the defendants had filed counter claim on the ground of adverse possession which was also dismissed by the trial Court and the appeal against that preferred by the defendants is also dismissed.

3. According to the learned counsel the substantial question of law which arises for consideration of this court is whether the first appellate court having confirmed the finding of the trial Court that the defendants have failed to prove that they were owners of the property by adverse possession and prescription, in such situation ought to have decreed the plaintiffs' suit for declaration of title to the suit property and for recovery

of possession on the basis of title.

4. So far as the above referred substantial question of law raised by the appellants is concerned, I am afraid that merely because the defendants failed to establish ownership of property by adverse possession, that does not necessarily lead to the conclusion that the plaintiffs/appellants succeeded in proving title to the property which even otherwise the plaintiffs have to prove by adducing independent and cogent evidence and therefore the above referred question of law cannot be treated to be a substantial question of law.

5. Secondly, the counsel for the appellants further contended that another substantial question of law involved in the present appeal is whether the first appellate court misconstrued the documents of land registration and purchase of 1/7th part by the plaintiffs' father in the public auction to hold that the suit property had not been properly described by the plaintiffs and there was dispute regarding the identity. Firstly this is purely a question of fact based on the documents produced in evidence by the plaintiffs, considered by the Courts below and recorded finding thereon and therefore this question also cannot be treated to be a substantial question of law. Even otherwise, the lower appellate court has observed in para 14 that P.W.1 has failed to answer how his father had acquired the right to the 1/7th part excluding the 1/7th part purportedly purchased by him in the public auction in the year 1915. It is to be noted that in para 1 of the plaint the plaintiffs have described the suit property known as "Gharbhatule" having Land Registration No.1381 and surveyed under No.40/15 bearing House No.23 existing thereon. However in the later paras of the plaint the plaintiffs have described the suit property as having 2/7th part, which property "Gharbhatule" was purchased in public auction by his late father on 10.11.1915 and other 1/7th part being originally owned by his late father.

6. In view of the above referred facts, the finding recorded by the courts below that P.W.1 has failed to answer how his father had acquired right to

1/7th part excluding 1/7th part purportedly purchased by the father of the plaintiff No.1 in auction goes to demonstrate that the appellants/original plaintiffs failed to adduced independent and cogent evidence to prove their title and therefore dismissed the suit and the appeal.

7. In the backdrop of these facts, the second question of law also cannot be treated to be substantial question of law.

Second Appeal dismissed.

D. D. SINHA, J.

sl.